

1 CALEB E. MASON (pro hac vice) (CA Bar No. 246653)

2 WERKSMAN JACKSON & QUINN, LLP

3 888 West Sixth Street, Fourth Floor

4 Los Angeles, California 90017

5 cmason@werksmanjackson.com

(213) 688-0460

6 MARK A. KILBURN (Nevada Bar No. 1702)

7 Law Offices of Mark Kilburn

8 327 S. Arlington Ave., Reno, NV 89501

9 kilburnlaw@sbcglobal.net

(775) 329-1735

Attorneys for Plaintiff Officer George Forbush

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 OFFICER GEORGE FORBUSH,) **Case No.: 3:21-cv-0163-MMD**

13)
14 Plaintiff,

15 vs.)

16 CITY OF SPARKS, NEVADA; CITY)

17 MANAGER NEIL KRUTZ, in his)

18 individual and official capacities;)

19 ASSISTANT CITY MANAGER)

20 JOHN MARTINI, in his individual and)

21 official capacities; HUMAN)

22 RESOURCES DIRECTOR MINDY)

23 FALK, in her individual and official)

24 capacities; DOES 1-10,)

25 Defendants.)

FIRST AMENDED COMPLAINT:

1. **Retaliation for Exercise of
First Amendment Rights, in
Violation of 42 U.S.C. § 1983**

2. **Retaliation for Exercise of
First Amendment Rights, in
Violation of 42 U.S.C. § 1983**

3. **Retaliation for Exercise of
First Amendment Rights, in
Violation of 42 U.S.C. § 1983**

4. **Retaliation for Exercise of
First Amendment Rights, in
Violation of 42 U.S.C. § 1983**

5. **Retaliation for Exercise of
First Amendment Rights, in
Violation of 42 U.S.C. § 1983**

6. **Prior Restraint, in Violation of
the First Amendment and 42
U.S.C. § 1983**

7. **Injunctive Relief**

DEMAND FOR JURY TRIAL

1
2 Plaintiff George Forbush (“OFFICER FORBUSH”), an individual and
3 Sparks Police Department officer, alleges as follows:
4

5 **JURISDICTION AND VENUE**

6 1. OFFICER FORBUSH brings this suit under the United States Constitution
7 and 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. §§ 1331 and
8 1343.

9 2. The acts alleged herein occurred in the District of Nevada. Venue lies in the
10 United States District Court for the District of Nevada, pursuant to 28 U.S.C. §
11 1391.

12 3. The case should be heard in the Reno Courthouse of this Court, because the
13 transactions and occurrences at issue herein took place in Washoe County, Nevada.
14

15 **PARTIES**

16 4. OFFICER FORBUSH was, until January 3, 2022, s an officer in the Sparks
17 Police Department (“Department”). He was employed by the Department for over
18 twenty years. He is, and at all times relevant hereto was, a resident of Washoe
19 County, Nevada. He exercised his First Amendment rights in Washoe County,
20 Nevada, and he suffered the present and future damages at issue in this case in
21 Washoe County, Nevada, within this judicial district.

22 5. Defendant CITY OF SPARKS (“CITY”) is a municipality organized under
23 the Constitution and laws of the State of Nevada. It is located in this judicial
24 district, in Washoe County, Nevada.

25 6. Defendant Neil Krutz (“MR. KRUTZ”), an individual, is the CITY’s City
26 Manager. He is the final policymaker for the City with respect to the transactions
27 and occurrences at issue herein, and is vested with the power and authority to
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1 make, approve, and execute CITY policies and practices with respect to personnel
2 and disciplinary matters. He initiated, participated in, and ratified the transactions
3 and occurrences at issue herein, acting under color of law and exercising state
4 power. He is sued herein in both his individual and official capacities.

5 7. Defendant John Martini (“MR. MARTINI”), an individual, is the CITY’s
6 Assistant City Manager. He initiated, participated in, and ratified the transactions
7 and occurrences at issue herein, acting under color of law and exercising state
8 power. He is sued herein in both his individual and official capacities.

9 8. Defendant Mindy Falk (“MS. FALK”) was at all relevant times the CITY’s
10 Human Resources director. She initiated, participated in, and ratified the
11 transactions and occurrences at issue herein, acting under color of law and
12 exercising state power. She is sued herein in both her individual and official
13 capacities.

14 9. The actions, decisions, and/or failures to act at issue herein, taken by
15 DEFENDANTS, were committed within the purpose and scope of the
16 DEFENDANTS’ official agency and/or employment relationships with one
17 another, such that the CITY is legally responsible for all such acts and omissions.

18 10. OFFICER FORBUSH does not know the true names and capacities of
19 DOES 1 through 10, inclusive, and thus sues said Defendants by fictitious names.
20 OFFICER FORBUSH will identify the true names and capacities of DOES 1
21 through 10, inclusive, if and when they are ascertained. OFFICER FORBUSH is
22 informed, believes, and thereon alleges that each of the fictitiously named
23 Defendants is in some manner legally responsible for the occurrences alleged
24 herein.

25 11. OFFICER FORBUSH is informed and believes and alleges thereon that
26 Defendants, and each of them, at all times mentioned herein, were the agents,
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1 employees, servants, and/or co-conspirators of the remaining Defendants.
2 OFFICER FORBUSH is informed and believes, and thereon alleges, that
3 Defendants, and each of them, were the actual and/or ostensible agents of the
4 remaining Defendants and were acting within the course and scope of said agency.
5 Defendants shall be specified individually herein or referred to collectively as
6 “Defendants.”

7 **FACTUAL BACKGROUND**

8
9 12. OFFICER FORBUSH is a good cop. He started with the Sparks Police
10 Department in 2001, and before that worked for the Humboldt County Sheriff’s
11 Department since 1994. On the Sparks Police Department, he performed a variety
12 of important behind-the-scenes work, such as managing the Department’s fleet of
13 vehicles, coordinating the storage and disposal of abandoned vehicles, managing
14 the automated license plate reader program, and managing the Department’s
15 surplus military equipment program. In addition, he is a highly trained bomb
16 disposal technician, and serves on the Department’s bomb squad and on regional
17 bomb squads.

18 13. He has devoted himself to serving the people of Nevada for the past 26
19 years. He is devoted to his job and to the community he protects. And he is now
20 being disciplined not for anything having to do with his professional performance
21 as a police officer, but rather for “misconduct” that consists of expressing his
22 opinions, as a private citizen, while off-duty, on his personal social media
23 accounts, about matters of public concern. That is not right, and it is not
24 constitutional. DEFENDANTS disciplined OFFICER FORBUSH because of the
25 particular viewpoint of his political opinions as expressed on his personal social
26 media. A public employee’s off-duty social speech as a private citizen on matters
27 of public concern should not subject him to official employment discipline under
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1 our Constitution. The discipline imposed here on OFFICER FORBUSH violates
2 the Constitution. A public employer may not discipline or retaliate against its
3 employees for the content of their political speech as private citizens on matters of
4 public concern.

5 14. That rule has been the law for decades. Yet DEFENDANTS punished
6 OFFICER FORBUSH for political comments on matters of public concern that are
7 squarely within the mainstream of American political discourse and commentary.
8

9 15. OFFICER FORBUSH has devoted his career to protecting and serving the
10 people of Sparks. He is politically aware and engaged, and proud to be a
11 participant in American democracy. He believes deeply in the values of civic
12 discourse and debate, and he believes all Americans can and should freely express
13 their opinions on matters of public concern.

14 **OFFICER FORBUSH'S SOCIAL MEDIA ACCOUNTS**

15 16. In 2017, OFFICER FORBUSH created a Twitter account ("Twitter
16 Account") on which he discussed numerous topics relating to current events,
17 politics, and social issues. He posted his content on the Twitter Account from his
18 home, while off duty. At no time did the Twitter Account or any of OFFICER
19 FORBUSH's statements thereon ever purport to be official statements by the
20 Department or statements in OFFICER FORBUSH's capacity as an Department
21 officer. OFFICER FORBUSH's statements on the account were always and
22 entirely his personal views, opinions, and comments, in his capacity as a private
23 citizen, on matters of public concern. He describes himself solely as a "Fourth-
24 Generation Nevadan." His speech on the Twitter Account had no connection to his
25 official duties, which did not include making public statements on social media or
26 elsewhere. He wrote and published his posts on his own time, and with his own
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1 resources. He never spoke or claimed to speak on behalf of or as a representative
2 of the Department or any governmental agency.

3 17. Rather, he spoke as a citizen and a human being, one whose right to speak
4 publicly on matters of public concern is fully protected by the First Amendment.
5 OFFICER FORBUSH has the same rights to engage in speech as anyone else; and
6 he is not required to hide his identity or his job when he does so.

7 18. OFFICER FORBUSH did not relinquish his right to think, care, and speak
8 about politics and current events when he accepted a job as a police officer. The
9 CITY has infringed on his First Amendment rights by officially disciplining him
10 for his off-duty speech as a private citizen on matters of public concern. Our
11 Constitution forbids public entities from punishing their employees for private
12 speech on matters of public concern. OFFICER FORBUSH loves his job, his city,
13 and his Department. But he can no longer sit quietly while he is punished by the
14 Department for his exercise of his First Amendment rights.

15
16 **The CITY Fails to Implement a Clear, Consistent, and Constitutional**
17 **Policy on Officers' Personal Social Media Use**

18 19. The CITY does not have a clear, consistent, and Constitutional policy
19 regarding officers' personal social media use.

20 20. The officer investigating the complaint against OFFICER FORBUSH noted
21 in his report that the key terms in the policy were undefined, so he had to resort to
22 looking at dictionary definitions to try to make sense of terms such as "obscene"
23 and "malicious." The officer even had to look up the word "should." Having
24 looked it up, the officer concluded the following: "doing anything that you should
25 not do is directly against what you are normally obligated to do." The Constitution
26 requires more specificity than this when municipalities are regulating the private,
27 off-duty political speech of their employees.
28

1 21. Because the CITY does not have a clear and specific social media policy for
 2 officers, officers like OFFICER FORBUSH are vulnerable to arbitrary, capricious,
 3 and viewpoint-motivated disciplinary actions, such as those undertaken by
 4 DEFENDANTS in this case.

5 22. The CITY's disciplinary investigation confirmed that OFFICER FORBUSH
 6 made all the Twitter posts while off-duty, on his own time, as a private citizen, and
 7 that nowhere in the posts or on his Twitter feed did he identify himself as a Sparks
 8 police officer or ever claim to be speaking on behalf of the Sparks Police
 9 Department or any governmental agency.

10 23. Moreover, the CITY's disciplinary investigation confirmed that the posts
 11 expressed OFFICER FORBUSH's "steadfast political beliefs and were not
 12 associated to the Sparks Police Department in any way."

13 24. The decision to use the disciplinary process to discipline, deter, punish, and
 14 chill officers' speech based on its political viewpoint was a deliberate choice made
 15 from among various alternatives by the official or officials responsible for
 16 establishing final policy with respect to the subject matter in question.

17 25. After reading through more than 700 of OFFICER FORBUSH's Twitter
 18 posts, the CITY ultimately disciplined him for four of them. Those four posts are
 19 set forth below.
 20

21 **OFFICER FORBUSH's Posts**

22 26. On or about December 4, 2020, the CITY suspended OFFICER FORBUSH
 23 without pay for four days, one day each for each of the four following posts:

24 27. **Post No. 1.** The first post was made by OFFICER FORBUSH in response
 25 to a video he saw on another Twitter user's feed that showed several protesters
 26 gathered around an American flag, attempting to light it on fire. They were
 27 holding lighters against the flag, but the flag was fire-resistant and would not burn.
 28

1 The protesters expressed frustration at their inability to burn the flag. OFFICER
2 FORBUSH, after watching the video, commented in response: “I would be a good
3 helper and throw a lot of gasoline in their direction as they held their lighters and
4 they say oops as I walked away.”

5 28. **Post No. 2.** The second post was made by OFFICER FORBUSH in
6 response to a video he saw on another Twitter user’s feed that showed protesters at
7 a Black Lives Matter march breaking the window of a car, dragging the driver out,
8 and beating him severely. OFFICER FORBUSH was outraged at the violence, and
9 posted in response: “I have six AR-15 rifles. I always thought having an AR-15 or
10 AK-47 pistol was pointless because of a lack of shouldering but now I’m going to
11 build a couple AR pistols just for BLM, Antifa or active shooters who cross my
12 path and can’t maintain social distancing.”

13 29. As a matter of law, the use of force, including deadly force, to defend
14 oneself in the circumstances shown in the video to which OFFICER FORBUSH
15 was responding, would be legal.

16 30. **Post No. 3.** The third post was made by OFFICER FORBUSH in response
17 to a video he saw on another Twitter user’s feed that showed a person masturbating
18 in a CITY park. OFFICER FORBUSH posted in response: “Next time put him in
19 some cross-hairs or on a red dot, please.”

20 31. **Post No. 4.** The fourth post was made by OFFICER FORBUSH in
21 response to a story posted by another Twitter user about a police officer who had
22 been convicted of planting evidence, making false statements, and framing
23 defendants. OFFICER FORBUSH was outraged at that officer’s betrayal of his
24 duty and his oath, and posted in response: “He made a lot of good cops look bad.
25 It would be ironic if someone planted drugs by cramming them up his ass so they
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27
28

1 could be found during an intake search when he goes to prison for what he did.
2 That would be the tip of the iceberg on the punishment scale.”

3 **The City Receives A Complaint About Post No. 2**

4 32. On or about August 2, 2020, the CITY received an anonymous internet
5 message regarding OFFICER FORBUSH’s Post No. 2, above. Based on the
6 CITY’s disclosures, the CITY does not know who the complainant was, and there
7 is no evidence or allegation that the complainant had ever met or interacted with
8 OFFICER FORBUSH, or even lived, worked, had ever visited Sparks, or even
9 could find Sparks on a map. The complainant was instead someone who was
10 simply scouring internet posts looking for commenters who expressed so-called
11 “right-wing” views, and then trying to “dox” those commenters by attempting
12 identify commenters who were police officers, and then make complaints to their
13 departments. That is exactly what the complainant did. Since OFFICER
14 FORBUSH used his real name, George Forbush, on his posts, the commenter
15 searched public-employee databases learned that OFFICER FORBUSH was a
16 police officer, and then made complaints about his political opinions to the CITY
17 and a newspaper in Reno. A columnist for the newspaper then wrote a column
18 about one of the posts, and the issue of a police officer’s right to express opinions
19 on social media on his own time, while off-duty, was widely discussed in the
20 community.
21

22 33. On August 10, 2020, fourteen people made comments at a Sparks City
23 Council meeting regarding OFFICER FORBUSH’s posts. Of those fourteen, *nine*
24 of them stated that they *supported* OFFICER FORBUSH. Those commenters
25 stated, inter alia, that they knew OFFICER FORBUSH, that they had multiple
26 experiences of his helping them diligently and professionally, and that we all as
27 Americans have a First Amendment right to express our political views as citizens
28

1 on our off-duty time; and that OFFICER FORBUSH is a good officer who does his
2 job well and fairly and has a positive impact on the community. Four commenters
3 stated that they did not approve of OFFICER FORBUSH's Tweets; *none* of those
4 commenters made any reference to his performance of his duties; *all* of them said
5 simply that they didn't want the CITY to employ people who hold OFFICER
6 FORBUSH's political views (which, as noted, are mainstream views held by
7 millions of people, including a majority of the citizens of Sparks). The final
8 commenter did not say anything about OFFICER FORBUSH. The meeting was
9 recorded and posted on the internet.

10
11 34. OFFICER FORBUSH's political views are mainstream and widely shared
12 in Sparks, in Nevada, and in the United States as a whole.

13 35. In the United States, people should not be fired for their political views.
14 Public agencies should not fire people for their political views.

15 36. In the United States, when callers to a city council meeting demand that a
16 police officer be fired for his political views, the city leaders ought to respond,
17 "Sorry, we don't do that in this country," and the matter should end there.

18 37. OFFICER FORBUSH's social media posts did not have any adverse impact
19 on the ability of the DEPARTMENT or OFFICER FORBUSH to perform law-
20 enforcement duties. As noted, anonymous internet complainant and the four
21 individuals who spoke against OFFICER FORBUSH at the City Council meeting
22 simply said they did not like OFFICER FORBUSH's political views. And as
23 noted, nine of fourteen (64%) commenters strongly supported OFFICER
24 FORBUSH, and all the commenters with actual experience of OFFICER
25 FORBUSH's performance of his duties praised his diligence and professionalism.
26 At no point in this entire process did anyone ever suggest that OFFICER
27 FORBUSH's political opinions had had any effect on his professional performance
28

1 of his duties. Literally the only impact on the Department was that fact that four
2 individuals who had never met or interacted with OFFICER FORBUSH did not
3 like OFFICER FORBUSH's political opinions.

4 38. On August 18, 2020, the CITY placed OFFICER FORBUSH on
5 administrative leave.

6 39. The issue of OFFICER FORBUSH's social media posts continued to be
7 politically fraught in Sparks during the fall of 2020 because there was a City
8 Council election, and members of and candidates for City Council positions
9 expressed public stances on OFFICER FORBUSH's posts. The majority of
10 candidates stated that police officers have First Amendment rights to express
11 themselves while off-duty, as citizens, on matters of public concern.
12

13 40. As noted, the complaints articulated by members of the public were
14 specifically directed to the political viewpoint of OFFICER FORBUSH's posts.
15 The issues raised therein are issues of great public importance, were the subject of
16 widespread public discussion around the time of the posts, and continue to be
17 widely discussed in public discourse. The Constitution guarantees OFFICER
18 FORBUSH the right to speak about that issue as a private citizen, free of restraint,
19 discipline, or retaliation by his public employer. It has long been clearly
20 established law that the expression of political viewpoints on matters of public
21 concern enjoys the highest level of protection of any speech under our
22 Constitution, and that viewpoint discrimination by public entities is virtually never
23 justifiable.
24

25 41. Despite this clearly established law, in the months following the August 10,
26 2020 City Council meeting, City Manager KRUTZ, Assistant City Manager
27 MARTINI, and Human Resources Director FALK decided, intended to, and did,
28 punish, discipline, and otherwise impose adverse employment actions on

1 OFFICER FORBUSH because of the political viewpoint of his social media
2 statements. DEFENDANTS knew that the Constitution provides everyone, even
3 public employees, the right to freedom of speech and thought in their personal off-
4 duty social media speech as a citizen on matters of public concern. But
5 DEFENDANTS did not like the political viewpoint of OFFICER FORBUSH's
6 speech, and decided to punish him for it using their official positions, authority,
7 and color of state law. DEFENDANTS initiated the CITY's disciplinary processes
8 against OFFICER FORBUSH. OFFICER FORBUSH defended himself, asserting
9 his constitutional right to speak while off-duty as a private citizen on matters of
10 public concern on his private social media account.

11
12 42. The investigating officer expressly found and agreed that OFFICER
13 FORBUSH made all the posts while off-duty, on his own personal time, and never
14 identified himself as, or claimed to speak on behalf of, any police department or
15 government agency.

16 43. On or about December 1, 2020, the CITY held a disciplinary hearing, and
17 imposed a penalty of one day of suspension without pay for each of the four posts,
18 for a total of four days' suspension.

19 **OFFICER FORBUSH Files this Lawsuit, and DEFENDANTS Retaliate**
20 **Further by Eliminating His Job and Forcing Him to Retire Early with a**
21 **Lower Pension**

22 44. OFFICER FORBUSH filed his Complaint in this action on April 8, 2021.
23 DEFENDANTS continued to retaliate against him thereafter for his First
24 Amendment-protected speech as set forth above, and for his First Amendment-
25 protected (and Seventh Amendment-protected) act of filing this lawsuit and
26 petitioning the Court for redress of his grievances.
27
28

1 45. Defendants' additional retaliation consisted of eliminating OFFICER
2 FORBUSH's position entirely, and then constructively discharging him by giving
3 him the "choice" of either retiring early, or returning to a patrol position, which
4 DEFENDANTS knew OFFICER FORBUSH could not do because of chronic knee
5 problems.

6 46. As noted above, OFFICER FORBUSH's position involved multiple behind-
7 the-scenes duties, including managing the Department's fleet of vehicles,
8 coordinating the storage and disposal of abandoned vehicles, managing the
9 automated license plate reader program, managing the Department's surplus
10 military equipment program, and serving as a bomb disposal technician on the
11 Department's bomb squad and regional bomb squads.

12 47. On or about September 22, 2021, the CITY's Human Resources
13 Department, which was run by Defendant FALK, the Human Resources Director,
14 posted a job announcement for OFFICER FORBUSH's position, as a civilian
15 (unsworn) position. OFFICER FORBUSH's supervisors in the Department,
16 including Deputy Chief Edmonson, explained to OFFICER FORBUSH that the
17 CITY was eliminating the position entirely as a sworn police officer position, and
18 that OFFICER FORBUSH's choices were to retire early or return to a patrol
19 position.
20

21 48. The CITY knew that OFFICER FORBUSH had chronic knee problems that
22 would prevent him from being able to accept the patrol duty. The "choice" was
23 thus a constructive discharge, forcing him to retire early.

24 49. OFFICER FORBUSH told his supervisors, including Deputy Chief
25 Edmonson and Chief Crawforth, that his position and day-to-day activities
26 included many tasks that had to be performed by a sworn police officer, and could
27 not be "civilianized," and that eliminating the position would lead to inefficiencies
28

1 and logistical and management difficulties for the Department. Deputy Chief
2 Edmonson and Chief Crawford agreed that it would be cumbersome, but
3 explained that they had no choice, because the decision to eliminate OFFICER
4 FORBUSH's position had been made by the CITY already, specifically including
5 DEFENDANT FALK.

6 50. The CITY's actions demonstrate beyond cavil that the CITY has no
7 possible claim that OFFICER FORBUSH could not be trusted to interact with the
8 public, because the CITY's express offer to OFFICER FORBUSH was to return to
9 patrol, where he would be interacting with the public every day.

10 51. However, because OFFICER FORBUSH's knee problems prevented him
11 from performing a patrol assignment, he was forced instead to retire early. January
12 3, 2022 was his last day.

13 52. But for DEFENDANTS' retaliation, OFFICER FORBUSH would have
14 kept working through August 2023, and retired on or about September 1, 2023.

15 53. Because he was forced to retire 18 months before he otherwise would have,
16 his pension amount is significantly lower that it would have been. Because he was
17 forced to retire early, his pension is calculated as 70% of his prior salary. If he had
18 continued to work as he had planned to do through August 2023, his pension
19 would have been calculated as 75% of his prior salary.

20 54. Additionally, during the 18-month period from January 2022 through
21 August 2023, OFFICER FORBUSH would have been earning his full salary.

22 55. The differential for that 18-month period, and the 5% difference in his
23 pension calculation for the rest of his life, result in significant economic harms to
24 OFFICER FORBUSH, in an amount according to proof at trial.

25
26
27 **OFFICER FORBUSH Is Harmed by DEFENDANTS' Wrongful Actions**
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1 56. OFFICER FORBUSH was harmed, continues to be harmed, and will be
2 harmed in the future by the DEFENDANTS' wrongful actions.

3 57. First, as noted above, OFFICER FORBUSH was forced to retire 18 months
4 before he would have absent DEFENDANTS' retaliation. This forced early
5 retirement caused his pension percentage to be 70%, rather than 75%, of his prior
6 salary. And it also caused him to lose 18 months of salary. In other words, for the
7 18 months between January 2022 and September 2023, Mr. Forbush received 70%
8 of his salary amount as a pension rather than 100% as a salary; and for this rest of
9 his life, Mr. Forbush will receive a pension set at 70% of his salary amount rather
10 than 75% of his salary amount.
11

12 58. Second, OFFICER FORBUSH is harmed psychologically, reputationally,
13 and emotionally by being targeted by DEFENDANTS and formally disciplined by
14 the CITY for expressing his views on matters of public concern in his speech as a
15 private citizen on his personal social media accounts. He was hounded out of a
16 profession he'd devoted his entire life to, simply because he participated on his
17 own time as a citizen in public discourse on matters of public concern—because
18 DEFENDANTS and the CITY didn't like the viewpoints he expressed and thought
19 it would be politically expedient to get him "out."
20

21 59. Third, OFFICER FORBUSH experienced the additional psychological and
22 emotional harms of having his future speech chilled and deterred through the
23 CITY's wrongful prior restraint of his off-duty speech as a citizen on matters of
24 public concern. OFFICER FORBUSH experienced this unconstitutional prior
25 restraint for his final year as a CITY employee from the time the discipline was
26 imposed on him, until January 2022. He was afraid to continue to participate in
27 public discourse as a citizen, and so he ceased doing so in fear of further retaliation
28

1 by DEFENDANTS. No American should be forced to give up participation in
2 public discourse for fear of losing his or her job.

3 60. Fourth, OFFICER FORBUSH's post-retirement employment prospects
4 with multiple private-sector and public-sector potential employers will be
5 significantly impaired with his personnel record marred by these wrongful
6 impositions of discipline. The loss of these opportunities harms OFFICER
7 FORBUSH in an amount subject to proof at trial.

8 61. The total amount of OFFICER FORBUSH's damages are subject to proof at
9 trial.

10 62. OFFICER FORBUSH was harmed by the CITY's failure to promulgate a
11 clear, consistent, and constitutional social media policy. The climate of
12 uncertainty, and arbitrary enforcement targeting political viewpoints, chilled the
13 exercise of the constitutional rights of speech and political participation of all
14 CITY personnel. That chilling effect harmed OFFICER FORBUSH, by deterring
15 him from exercising his right to participate freely in public discussion of matters of
16 public concern—a right that is of immense importance in a democracy. OFFICER
17 FORBUSH was deprived of that right during the entirety of his remaining time in
18 the Department, because he ceased his participation as a citizen in political because
19 he fears retaliation by the CITY on the basis of his personal First Amendment-
20 protected speech as a citizen on matters of public concern.

21 63. DEFENDANTS and each of them participated in and ratified the
22 disciplinary proceedings against OFFICER FORBUSH.

23 64. The ratification and personal participation by City Manager KRUTZ,
24 Assistant City Manager MARTINI, and Human Resources Director FALK in the
25 CITY's conduct as set forth herein—deliberately targeting officers' off-duty
26 speech for discipline and punishment based on its political viewpoint—is
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1 oppressive conduct, because it was done in a manner which injures or damages or
2 otherwise violates the rights of another person with unnecessary harshness or
3 severity and by misuse or abuse of authority. It is therefore sufficient to support an
4 award of punitive damages in this action. *Dang v. Cross*, 422 F.3d 800, 809 (9th
5 Cir. 2005).

6 65. The CITY punished OFFICER FORBUSH under City Administrative Rule
7 2.040 (Social Media), which the CITY applies to all private, personal, off-duty
8 social media activity and speech, and which reads in relevant part as follows:
9 “Employees and elected officials should not post discriminatory remarks, harassing
10 statements, and threats of violence or any language that can be viewed as
11 malicious, obscene, threatening or intimidating toward fellow employees, citizens,
12 or vendors.”

13 66. The CITY, in disciplining OFFICER FORBUSH, applied the term “should”
14 in Rule 2.040 to mean “shall,” and to create a mandatory prohibition against the
15 speech covered by Rule 2.040; and interpreted and that the term “can be viewed”
16 means that an employee can be subject to discipline based on any other person’s
17 opinion that a particular statement was “malicious, obscene, threatening or
18 intimidating,” or even the possibility that any other person might view a particular
19 statement as “malicious, obscene, threatening, or intimidating.”

20 67. The language of Rule 2.040, both on its face, and in the CITY’s
21 interpretation and application of it to OFFICER FORBUSH, is unconstitutionally
22 vague, ambiguous, and overbroad. It permits the CITY to punish employees, such
23 as OFFICER FORBUSH, for statements they make off-duty, in their capacity as
24 private citizens, speaking on matters of public concern, and which are the subject
25 of widespread public discussion and debate—solely because some CITY official,
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1 such as MARTINI, FALK, or KRUTZ, decides that someone *might* consider the
2 private, off-duty statement to be “malicious, obscene, threatening, or intimidating.”

3 68. Worse, the rule has no clear definition for the terms “malicious, obscene,
4 threatening, or intimidating,” let alone one that is constitutionally compliant and
5 that is noticed to employees.

6 69. Worse still, the rule makes no distinction between speech that could
7 reasonably be expected to disrupt the Department’s operations, and speech that
8 would not.

9 70. All of the above deficiencies render Rule 2.040 unconstitutional under
10 clearly established law, for example *Moonin v. Tice*, 868 F.3d 853 (9th Cir. 2017).

11 71. Rule 2.040 is not only unconstitutional in its application to OFFICER
12 FORBUSH’s disciplinary proceedings as set forth herein; it is also an
13 unconstitutional prior restraint on OFFICER FORBUSH and every other officer in
14 the DEPARTMENT (and indeed every other employee and official of the CITY),
15 because OFFICER FORBUSH’s case is a warning broadcast to all CITY
16 employees that they had better not say anything—anywhere, in any forum, even in
17 their personal social media discussions of matters of public concern—that triggers
18 online “outrage” from an anonymous internet commenter.

19 72. The CITY is sending a loud and clear signal of prior restraint to its
20 employees. It may as well post signs that read: “You’d better not engage in social
21 media debates on anything, even important matters of public policy and national
22 concern, because if anyone out there on the internet decides that something you
23 said was ‘malicious’ or ‘intimidating,’ we’ll target you for official discipline and
24 adverse employment consequences. What sorts of statements constitute
25 ‘malicious’ or ‘intimidating,’ you ask? You’ll find out when we discipline you.”
26 Such a policy on public-employee speech is not permissible in the United States.
27
28

1 73. The CITY's signal was received. All the officers in the Department know
2 what happened to OFFICER FORBUSH, and know that the CITY targeted him for
3 discipline because of his personal social media posts made on his own time, as a
4 private citizen, on matters of public concern and widespread public debate. The
5 CITY has chilled and continues to chill the present and future participation in
6 constitutionally protected off-duty speech by other Department officers and CITY
7 employees, because they fear that the CITY will do to them what it did to
8 OFFICER FORBUSH.
9

10 **CLAIMS FOR RELIEF**

11 **First Claim For Relief**

12 **Retaliation Based on Exercise of Right to Free Speech in Violation of 42** 13 **U.S.C. § 1983 ("Post No. 1")** 14 **(Against All Defendants)**

15 74. OFFICER FORBUSH re-alleges and incorporates by reference as if fully
16 set forth herein all preceding paragraphs of this Complaint.

17 75. OFFICER FORBUSH engaged in constitutionally protected activity when
18 he spoke as a private citizen on matters of public concern, on his personal social
19 media account, in posting Post No. 1.

20 76. As a result of his constitutionally protected activity, OFFICER FORBUSH
21 was subjected to adverse action by DEFENDANTS under color of state law that
22 would chill a person of ordinary firmness from continuing to engage in that
23 protected activity, when DEFENDANTS charged him with misconduct and
24 imposed official discipline on him.

25 77. There was a substantial causal relationship between the constitutionally
26 protected activity and the adverse action taken against OFFICER FORBUSH by
27 DEFENDANTS, because DEFENDANTS directly and expressly punished him for
28 his constitutionally protected activity.

1 78. DEFENDANTS developed and maintained policies and customs that
2 violated OFFICER FORBUSH's constitutional rights. DEFENDANTS ratified,
3 endorsed, and abetted the retaliatory decisions and actions, and the basis for them.
4 DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline
5 against OFFICER FORBUSH for exercising his First Amendment rights.

6 79. As a direct result of OFFICER FORBUSH's exercising his constitutional
7 right to speak publicly—on his own time, off-duty, as a citizen—publicly on
8 matters of public concern, DEFENDANTS retaliated against him, including, inter
9 alia, taking adverse employment actions against him, by disciplining him for the
10 content and/or viewpoint of his speech. Absent OFFICER FORBUSH's exercising
11 his constitutionally protected rights to speak, DEFENDANTS would not have
12 taken the adverse employment actions against him set forth herein.

13 80. At all times mentioned herein, OFFICER FORBUSH's constitutionally
14 protected activities were related to matters of public concern, and were not
15 undertaken pursuant to job duties. OFFICER FORBUSH's speech was on matters
16 of widely-debated public concern.

17 81. By taking adverse employment actions against OFFICER FORBUSH that
18 were substantially motivated by his constitutionally protected speech,
19 DEFENDANTS violated OFFICER FORBUSH's rights under the First
20 Amendment to the United State Constitution.

21 82. DEFENDANTS' official custom, pattern and practice of retaliating against
22 police officers for the content and viewpoint of their off-duty, private-citizen
23 speech on matters of public concern, has a continued chilling effect upon
24 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
25 DEFENDANTS' adverse employment actions were intended to, did, and would
26 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
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1 employees from speaking publicly, on their own time, on matters of public
2 concern, out of fear that if they expressed certain political views or opinions as
3 citizens, they may be punished as City employees.

4 83. As a direct result of DEFENDANTS' acts and omissions, OFFICER
5 FORBUSH has suffered significant damages in an amount subject to proof at trial,
6 including psychological and emotional harms; reputational harms; lost promotional
7 opportunities and associated lost wages and pension income; and lost future
8 income from post-retirement private-sector employment opportunities that will be
9 unavailable to him because he now has an adverse disciplinary record with the
10 Department.
11

12 84. As a direct, foreseeable, and proximate result of DEFENDANTS' acts and
13 omissions, OFFICER FORBUSH suffered and continues to suffer mental and
14 emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
15 damage, in an amount according to proof at the time of trial, and expenses incurred
16 for treatment of same.

17 85. In performing the acts herein alleged, DEFENDANTS acted intentionally to
18 injure OFFICER FORBUSH, namely, to discipline him and adversely affect his
19 employment, because of the content and viewpoint of his constitutionally protected
20 speech on matters of public concern, which he engaged in while off duty, as a
21 citizen.
22

23 86. DEFENDANTS' conduct was oppressive, despicable and performed with a
24 willful, conscious, and reckless disregard of OFFICER FORBUSH's civil rights
25 such that punitive or exemplary damages are warranted.

26 **Second Claim For Relief**
27 **Retaliation Based on Exercise of Right to Free Speech in Violation of 42**
28 **U.S.C. § 1983 ("Post No. 2")**
(Against All Defendants)

1 87. OFFICER FORBUSH re-alleges and incorporates by reference as if fully
2 set forth herein all preceding paragraphs of this Complaint.

3 88. OFFICER FORBUSH engaged in constitutionally protected activity when
4 he spoke as a private citizen on matters of public concern, on his personal social
5 media account, in posting Post No. 2.

6 89. As a result of his constitutionally protected activity, OFFICER FORBUSH
7 was subjected to adverse action by DEFENDANTS under color of state law that
8 would chill a person of ordinary firmness from continuing to engage in that protected
9 activity, when DEFENDANTS charged him with misconduct and imposed official
10 discipline on him.

11 90. There was a substantial causal relationship between the constitutionally
12 protected activity and the adverse action taken against OFFICER FORBUSH by
13 DEFENDANTS, because DEFENDANTS directly and expressly punished him for
14 his constitutionally protected activity.

15 91. DEFENDANTS developed and maintained policies and customs that
16 violated OFFICER FORBUSH's constitutional rights. DEFENDANTS ratified,
17 endorsed, and abetted the retaliatory decisions and actions, and the basis for them.
18 DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline
19 against OFFICER FORBUSH for exercising his First Amendment rights.

20 92. As a direct result of OFFICER FORBUSH's exercising his constitutional
21 right to speak publicly—on his own time, off-duty, as a citizen—publicly on
22 matters of public concern, DEFENDANTS retaliated against him, including, inter
23 alia, taking adverse employment actions against him, by disciplining him for the
24 content and/or viewpoint of his speech. Absent OFFICER FORBUSH's exercising
25 his constitutionally protected rights to speak, DEFENDANTS would not have
26 taken the adverse employment actions against him set forth herein.
27
28

1 93. At all times mentioned herein, OFFICER FORBUSH's constitutionally
2 protected activities were related to matters of public concern, and were not
3 undertaken pursuant to job duties. OFFICER FORBUSH's speech was on matters
4 of widely-debated public concern.

5 94. By taking adverse employment actions against OFFICER FORBUSH that
6 were substantially motivated by his constitutionally protected speech,
7 DEFENDANTS violated OFFICER FORBUSH's rights under the First
8 Amendment to the United State Constitution.

9 95. DEFENDANTS' official custom, pattern and practice of retaliating against
10 police officers for the content and viewpoint of their off-duty, private-citizen
11 speech on matters of public concern, has a continued chilling effect upon
12 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
13 DEFENDANTS' adverse employment actions were intended to, did, and would
14 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
15 employees from speaking publicly, on their own time, on matters of public
16 concern, out of fear that if they expressed certain political views or opinions as
17 citizens, they may be punished as City employees.

18 96. As a direct result of DEFENDANTS' acts and omissions, OFFICER
19 FORBUSH has suffered significant damages in an amount subject to proof at trial,
20 including psychological and emotional harms; reputational harms; lost promotional
21 opportunities and associated lost wages and pension income; and lost future
22 income from post-retirement private-sector employment opportunities that will be
23 unavailable to him because he now has an adverse disciplinary record with the
24 Department.

25 97. As a direct, foreseeable, and proximate result of DEFENDANTS' acts and
26 omissions, OFFICER FORBUSH suffered and continues to suffer mental and
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1 emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
2 damage, in an amount according to proof at the time of trial, and expenses incurred
3 for treatment of same.

4 98. In performing the acts herein alleged, DEFENDANTS acted intentionally to
5 injure OFFICER FORBUSH, namely, to discipline him and adversely affect his
6 employment, because of the content and viewpoint of his constitutionally protected
7 speech on matters of public concern, which he engaged in while off duty, as a
8 citizen.

9 99. DEFENDANTS' conduct was oppressive, despicable and performed with a
10 willful, conscious, and reckless disregard of OFFICER FORBUSH's civil rights
11 such that punitive or exemplary damages are warranted.
12

13 **Third Claim For Relief**
14 **Retaliation Based on Exercise of Right to Free Speech in Violation of 42**
15 **U.S.C. § 1983 ("Post No. 3")**
16 **(Against All Defendants)**

17 100. OFFICER FORBUSH re-alleges and incorporates by reference as if
18 fully set forth herein all preceding paragraphs of this Complaint.

19 101. OFFICER FORBUSH engaged in constitutionally protected activity
20 when he spoke as a private citizen on matters of public concern, on his personal
21 social media account, in posting Post No. 3.

22 102. As a result of his constitutionally protected activity, OFFICER
23 FORBUSH was subjected to adverse action by DEFENDANTS under color of state
24 law that would chill a person of ordinary firmness from continuing to engage in that
25 protected activity, when DEFENDANTS charged him with misconduct and imposed
26 official discipline on him.

27 103. There was a substantial causal relationship between the
28 constitutionally protected activity and the adverse action taken against OFFICER

1 FORBUSH by DEFENDANTS, because DEFENDANTS directly and expressly
2 punished him for his constitutionally protected activity.

3 104. DEFENDANTS developed and maintained policies and customs that
4 violated OFFICER FORBUSH's constitutional rights. DEFENDANTS ratified,
5 endorsed, and abetted the retaliatory decisions and actions, and the basis for them.
6 DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline
7 against OFFICER FORBUSH for exercising his First Amendment rights.

8 105. As a direct result of OFFICER FORBUSH's exercising his
9 constitutional right to speak publicly—on his own time, off-duty, as a citizen—
10 publicly on matters of public concern, DEFENDANTS retaliated against him,
11 including, inter alia, taking adverse employment actions against him, by
12 disciplining him for the content and/or viewpoint of his speech. Absent OFFICER
13 FORBUSH's exercising his constitutionally protected rights to speak,
14 DEFENDANTS would not have taken the adverse employment actions against him
15 set forth herein.

16 106. At all times mentioned herein, OFFICER FORBUSH's
17 constitutionally protected activities were related to matters of public concern, and
18 were not undertaken pursuant to job duties. OFFICER FORBUSH's speech was on
19 matters of widely-debated public concern.

20 107. By taking adverse employment actions against OFFICER
21 FORBUSH that were substantially motivated by his constitutionally protected
22 speech, DEFENDANTS violated OFFICER FORBUSH's rights under the First
23 Amendment to the United State Constitution.

24 108. DEFENDANTS' official custom, pattern and practice of retaliating
25 against police officers for the content and viewpoint of their off-duty, private-
26 citizen speech on matters of public concern, has a continued chilling effect upon
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1 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
2 DEFENDANTS' adverse employment actions were intended to, did, and would
3 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
4 employees from speaking publicly, on their own time, on matters of public
5 concern, out of fear that if they expressed certain political views or opinions as
6 citizens, they may be punished as City employees.

7 109. As a direct result of DEFENDANTS' acts and omissions, OFFICER
8 FORBUSH has suffered significant damages in an amount subject to proof at trial,
9 including psychological and emotional harms; reputational harms; lost promotional
10 opportunities and associated lost wages and pension income; and lost future
11 income from post-retirement private-sector employment opportunities that will be
12 unavailable to him because he now has an adverse disciplinary record with the
13 Department.
14

15 110. As a direct, foreseeable, and proximate result of DEFENDANTS'
16 acts and omissions, OFFICER FORBUSH suffered and continues to suffer mental
17 and emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
18 damage, in an amount according to proof at the time of trial, and expenses incurred
19 for treatment of same.

20 111. In performing the acts herein alleged, DEFENDANTS acted
21 intentionally to injure OFFICER FORBUSH, namely, to discipline him and
22 adversely affect his employment, because of the content and viewpoint of his
23 constitutionally protected speech on matters of public concern, which he engaged
24 in while off duty, as a citizen.

25 112. DEFENDANTS' conduct was oppressive, despicable and performed
26 with a willful, conscious, and reckless disregard of OFFICER FORBUSH's civil
27 rights such that punitive or exemplary damages are warranted.
28

Fourth Claim For Relief
Retaliation Based on Exercise of Right to Free Speech in Violation of 42
U.S.C. § 1983 (“Post No. 4”)
(Against All Defendants)

113. OFFICER FORBUSH re-alleges and incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

114. OFFICER FORBUSH engaged in constitutionally protected activity when he spoke as a private citizen on matters of public concern, on his personal social media account, in posting Post No. 4.

115. As a result of his constitutionally protected activity, OFFICER FORBUSH was subjected to adverse action by DEFENDANTS under color of state law that would chill a person of ordinary firmness from continuing to engage in that protected activity, when DEFENDANTS charged him with misconduct and imposed official discipline on him.

116. There was a substantial causal relationship between the constitutionally protected activity and the adverse action taken against OFFICER FORBUSH by DEFENDANTS, because DEFENDANTS directly and expressly punished him for his constitutionally protected activity.

117. DEFENDANTS developed and maintained policies and customs that violated OFFICER FORBUSH’s constitutional rights. DEFENDANTS ratified, endorsed, and abetted the retaliatory decisions and actions, and the basis for them. DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline against OFFICER FORBUSH for exercising his First Amendment rights.

118. As a direct result of OFFICER FORBUSH’s exercising his constitutional right to speak publicly—on his own time, off-duty, as a citizen—publicly on matters of public concern, DEFENDANTS retaliated against him, including, inter alia, taking adverse employment actions against him, by

1 disciplining him for the content and/or viewpoint of his speech. Absent OFFICER
2 FORBUSH's exercising his constitutionally protected rights to speak,
3 DEFENDANTS would not have taken the adverse employment actions against him
4 set forth herein.

5 119. At all times mentioned herein, OFFICER FORBUSH's
6 constitutionally protected activities were related to matters of public concern, and
7 were not undertaken pursuant to job duties. OFFICER FORBUSH's speech was on
8 matters of widely-debated public concern.

9 120. By taking adverse employment actions against OFFICER
10 FORBUSH that were substantially motivated by his constitutionally protected
11 speech, DEFENDANTS violated OFFICER FORBUSH's rights under the First
12 Amendment to the United State Constitution.

13 121. DEFENDANTS' official custom, pattern and practice of retaliating
14 against police officers for the content and viewpoint of their off-duty, private-
15 citizen speech on matters of public concern, has a continued chilling effect upon
16 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
17 DEFENDANTS' adverse employment actions were intended to, did, and would
18 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
19 employees from speaking publicly, on their own time, on matters of public
20 concern, out of fear that if they expressed certain political views or opinions as
21 citizens, they may be punished as City employees.

22 122. As a direct result of DEFENDANTS' acts and omissions, OFFICER
23 FORBUSH has suffered significant damages in an amount subject to proof at trial,
24 including psychological and emotional harms; reputational harms; lost promotional
25 opportunities and associated lost wages and pension income; and lost future
26 income from post-retirement private-sector employment opportunities that will be
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1 unavailable to him because he now has an adverse disciplinary record with the
2 Department.

3 123. As a direct, foreseeable, and proximate result of DEFENDANTS'
4 acts and omissions, OFFICER FORBUSH suffered and continues to suffer mental
5 and emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
6 damage, in an amount according to proof at the time of trial, and expenses incurred
7 for treatment of same.

8 124. In performing the acts herein alleged, DEFENDANTS acted
9 intentionally to injure OFFICER FORBUSH, namely, to discipline him and
10 adversely affect his employment, because of the content and viewpoint of his
11 constitutionally protected speech on matters of public concern, which he engaged
12 in while off duty, as a citizen.

13 125. DEFENDANTS' conduct was oppressive, despicable and performed
14 with a willful, conscious, and reckless disregard of OFFICER FORBUSH's civil
15 rights such that punitive or exemplary damages are warranted.

16
17 **Fifth Claim for Relief**
18 **Retaliation Based on Exercise of Right to Free Speech and to Access to the**
19 **Courts in Violation of 42**
20 **U.S.C. § 1983 ("Constructive Discharge")**
21 **(Against All Defendants)**

22 126. OFFICER FORBUSH re-alleges and incorporates by reference as if
23 fully set forth herein all preceding paragraphs of this Complaint.

24 127. OFFICER FORBUSH engaged in constitutionally protected activity
25 when he spoke as a private citizen on matters of public concern, on his personal
26 social media account, in posting the Social Media Posts.

1 128. OFFICER FORBUSH engaged in constitutionally protected activity
2 when he filed a lawsuit in this case against the CITY and all DEFENDANTS, in
3 April 2021.

4 129. As a result of his constitutionally protected activity, OFFICER
5 FORBUSH was subjected to adverse action by DEFENDANTS under color of state
6 law that would chill a person of ordinary firmness from continuing to engage in that
7 protected activity, when DEFENDANTS eliminated his position and constructively
8 discharged him, as set forth herein.

9 130. There was a substantial causal relationship between the
10 constitutionally protected activity and the adverse actions taken against OFFICER
11 FORBUSH by DEFENDANTS, because DEFENDANTS directly and expressly
12 punished him for his constitutionally protected activity.

13 131. DEFENDANTS developed and maintained policies and customs that
14 violated OFFICER FORBUSH's constitutional rights. DEFENDANTS ratified,
15 endorsed, and abetted the retaliatory decisions and actions, and the basis for them.
16 DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline
17 against OFFICER FORBUSH for exercising his First Amendment rights to speak
18 as a citizen on matters of public concern, and to petition in the Courts for redress of
19 his grievances.
20

21 132. As a direct result of OFFICER FORBUSH's exercising his
22 constitutional right to speak publicly—on his own time, off-duty, as a citizen—
23 publicly on matters of public concern, DEFENDANTS retaliated against him,
24 taking adverse employment actions against him, as set forth herein, first by
25 disciplining him for the content and/or viewpoint of his speech, and then by
26 eliminating his position and constructively discharging him. Absent OFFICER
27 FORBUSH's exercising his constitutionally protected rights to speak,
28

1 DEFENDANTS would not have taken the adverse employment actions against him
2 set forth herein.

3 133. At all times mentioned herein, OFFICER FORBUSH's
4 constitutionally protected activities were related to matters of public concern, and
5 were not undertaken pursuant to job duties. OFFICER FORBUSH's speech was on
6 matters of widely-debated public concern.

7 134. By taking adverse employment actions against OFFICER
8 FORBUSH that were substantially motivated by his constitutionally protected
9 speech, DEFENDANTS violated OFFICER FORBUSH's rights under the First
10 Amendment to the United State Constitution.

11 135. DEFENDANTS' official custom, pattern and practice of retaliating
12 against police officers for the content and viewpoint of their off-duty, private-
13 citizen speech on matters of public concern, has a continued chilling effect upon
14 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
15 DEFENDANTS' adverse employment actions were intended to, did, and would
16 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
17 employees from speaking publicly, on their own time, on matters of public
18 concern, out of fear that if they expressed certain political views or opinions as
19 citizens, they may be punished as City employees.

20 136. As a direct result of DEFENDANTS' acts and omissions, OFFICER
21 FORBUSH has suffered significant damages in an amount subject to proof at trial,
22 including psychological and emotional harms; reputational harms; lost wages and
23 lost pension income; and lost future income from post-retirement private-sector
24 employment opportunities that will be unavailable to him because he now has an
25 adverse disciplinary record with the Department.
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1 137. As a direct, foreseeable, and proximate result of DEFENDANTS'
2 acts and omissions, OFFICER FORBUSH suffered and continues to suffer mental
3 and emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
4 damage, in an amount according to proof at the time of trial, and expenses incurred
5 for treatment of same.

6 138. In performing the acts herein alleged, DEFENDANTS acted
7 intentionally to injure OFFICER FORBUSH, namely, to discipline him and
8 adversely affect his employment, because of the content and viewpoint of his
9 constitutionally protected speech on matters of public concern, which he engaged
10 in while off duty, as a citizen.

11 139. DEFENDANTS' conduct was oppressive, despicable and performed
12 with a willful, conscious, and reckless disregard of OFFICER FORBUSH's civil
13 rights such that punitive or exemplary damages are warranted.

14 **Sixth Claim for Relief**

15 **Prior Restraint, in Violation of the First Amendment and 42 U.S.C. § 1983**
16 **(Against Defendant CITY)**

17 140. OFFICER FORBUSH re-alleges every preceding and succeeding
18 paragraph of this complaint as though fully set forth herein.

19 141. Rule 2.040 imposes an unconstitutional prior restraint on OFFICER
20 FORBUSH and every other public employee of the CITY.

21 142. As set forth herein, the language of Rule 2.040, both on its face, and
22 in the CITY's interpretation and application of it to OFFICER FORBUSH, is
23 unconstitutionally vague, ambiguous, and overbroad. It permits the CITY and its
24 officials such as MARTINI, FALK, and KRUTZ, acting under color of state law,
25 to punish employees, such as OFFICER FORBUSH, for statements they make off-
26 duty, in their capacity as private citizens, speaking on matters of public concern,
27 and which are the subject of widespread public discussion and debate—solely
28

1 because some CITY official, such as MARTINI, FALK, or KRUTZ, decides that
2 someone *might* consider the private, off-duty statement to be “malicious, obscene,
3 threatening, or intimidating.”

4 143. Worse, the rule has no clear definition for the terms “malicious,
5 obscene, threatening, or intimidating,” let alone one that is constitutionally
6 compliant and that is noticed to employees.

7 144. Worse still, the rule makes no distinction between speech that could
8 reasonably be expected to disrupt the Department’s operations, and speech that
9 would not.

10 145. A municipality’s rule or policy on employee speech is an
11 unconstitutional prior restraint if it restricts the municipality’s employees’ personal
12 non-official speech as citizens on matters of public concern, and does so without
13 an adequate justification.

14 146. The prior restraint analysis “focus[es] on the chilling effect of the
15 employer’s policy on the employee’s speech.” *Barone v. City of Springfield,*
16 *Oregon*, 902 F.3d 1091 (9th Cir. 2018). Here, the language of Rule 2.040, and the
17 CITY’s use of Rule 2.040 to punish OFFICER FORBUSH for his personal off-
18 duty speech as a citizen on matters of public concern and widespread public debate
19 chilled and deterred OFFICER FORBUSH from engaging in constitutionally
20 protected off-duty speech for the entirety of his remaining time in the employ of
21 the Department, between the imposition of discipline on him in December 2020
22 through his constructive discharge in January 2022.

23 147. The CITY also engaged in prior restraint against other Department
24 officers and CITY employees, because they fear that the CITY will do to them
25 what it did to OFFICER FORBUSH. All CITY employees are thus required to
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1 relinquish their First Amendment rights lest they face official punishment and
2 discipline.

3 **Seventh Claim for Relief**
4 **Injunctive Relief**
5 **(Against Defendant CITY)**

6 148. OFFICER FORBUSH re-alleges every preceding and succeeding
7 paragraph of this complaint as though fully set forth herein.

8 149. OFFICER FORBUSH engaged in constitutionally protected activity
9 when he spoke as a private citizen on matters of public concern, on his personal
10 social media accounts.

11 150. As a result of his constitutionally protected activity, OFFICER
12 FORBUSH was subjected to adverse action by Defendants under color of state law
13 that would chill a person of ordinary firmness from continuing to engage in that
14 protected activity, when Defendants charged him with misconduct and imposed
15 official discipline on him.

16 151. There was a substantial causal relationship between the
17 constitutionally protected activity and the adverse action taken against OFFICER
18 FORBUSH by Defendants, because Defendants directly and expressly punished
19 him for his constitutionally protected activity.

20 152. DEFENDANTS developed and maintained, and continue to
21 maintain, policies and customs that violated OFFICER FORBUSH's constitutional
22 rights. DEFENDANTS ratified, endorsed, and abetted the retaliatory decisions and
23 actions, and the basis for them, set forth herein. DEFENDANTS knew of, ratified,
24 and failed to stop, the imposition of discipline against OFFICER FORBUSH for
25 exercising his First Amendment rights.

26 153. As a direct result of OFFICER FORBUSH's exercising his constitutional
27 right to speak publicly—on his own time, off-duty, as a citizen—publicly on
28

1 matters of public concern, DEFENDANTS retaliated against him, including, inter
2 alia, taking adverse employment actions against him, by disciplining him for the
3 content and/or viewpoint of his speech. Absent OFFICER FORBUSH's exercising
4 his constitutionally protected rights to speak, DEFENDANTS would not have
5 taken the adverse employment actions against him set forth herein.

6 154. At all times mentioned herein, OFFICER FORBUSH's
7 constitutionally protected activities were related to matters of public concern, and
8 were not undertaken pursuant to job duties. OFFICER FORBUSH's speech was on
9 matters of widely-debated public concern.
10

11 155. By taking adverse employment actions against OFFICER FORBUSH
12 that were substantially motivated by his constitutionally protected speech,
13 DEFENDANTS violated OFFICER FORBUSH's rights under the First
14 Amendment to the United State Constitution.

15 156. DEFENDANTS' official custom, pattern and practice of retaliating
16 against police officers for the content and viewpoint of their off-duty, private-
17 citizen speech on matters of public concern, has a continued chilling effect upon
18 OFFICER FORBUSH's speech activities and those of many of his fellow officers.
19 DEFENDANTS' adverse employment actions were intended to, did, and would
20 reasonably chill and deter OFFICER FORBUSH, other officers, and other City
21 employees from speaking publicly, on their own time, on matters of public
22 concern, out of fear that if they expressed certain political views or opinions as
23 citizens, they may be punished as City employees.

24 157. As a direct result of DEFENDANTS' acts and omissions, OFFICER
25 FORBUSH has suffered significant damages in an amount subject to proof at trial,
26 including psychological and emotional harms; reputational harms; lost wages and
27 pension income; and lost future income from post-retirement private-sector
28

1 employment opportunities that will be unavailable to him because he now has an
2 adverse disciplinary record with the Department.

3 158. As a direct, foreseeable and proximate result of DEFENDANTS' acts
4 and omissions, OFFICER FORBUSH suffered and continues to suffer mental and
5 emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his
6 damage, in an amount according to proof at the time of trial, and expenses incurred
7 for treatment of same.

8 159. In performing the acts herein alleged, DEFENDANTS acted
9 intentionally to injure OFFICER FORBUSH, namely, to discipline him and
10 adversely affect his employment, because of the content and viewpoint of his
11 constitutionally protected speech on matters of public concern, which he engaged
12 in while off duty, as a citizen.

13 160. DEFENDANTS' actions are founded in and arise from deliberate
14 policy positions and decisions that are ongoing and can only be fully remedied by
15 injunctive relief in addition to damages. Accordingly, OFFICER FORBUSH is
16 entitled to, and hereby requests, that the Court enter an appropriate injunction
17 requiring, inter alia, that the Department (1) purge OFFICER FORBUSH's
18 personnel file of all disciplinary actions based on the unconstitutional punishment
19 of protected speech as set forth herein; and (2) withdraw Rule 2.040 and all similar
20 policies, and implement a policy governing officers' personal social media use that
21 is consistent with the Constitution.
22

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against DEFENDANTS for:

25 1. Compensatory damages, economic and non-economic damages in excess of
26 \$1,000,000, in an amount according to proof;
27
28

2. General damages to compensate OFFICER FORBUSH for mental and emotional injuries, distress, anxiety, and humiliation;

3. Attorneys' fees pursuant to 42 U.S.C. § 1988;

4. Exemplary or punitive damages as to individual DEFENDANTS KRUTZ, MARTINI, and FALK, in an amount according to proof that is sufficient to punish and prevent future violations of constitutional rights (namely, the deliberate retaliation against, punishment of, or constructive termination of, a public employee based on the employee's protected First Amendment speech as a private citizen on matters of public concern);

5. Injunctive relief as set forth herein;

6. Costs of suit;

7. Post-judgment interest;

8. Such additional relief as the Court may deem proper.

DATED: April 20, 2022

Respectfully submitted,



CALEB E. MASON

/s/ *Mark Kilburn*

MARK KILBURN

Attorneys for Plaintiff

GEORGE FORBUSH

DEMAND FOR JURY TRIAL

OFFICER FORBUSH demands a jury trial.

1 DATED: April 20, 2022

Respectfully submitted,

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3 

4 CALEB E. MASON

5
6 /s/ *Mark Kilburn*

7 MARK KILBURN

8 Attorneys for Plaintiff

9 GEORGE FORBUSH
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